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1. Failure to Produce Leads to Dismissal: QB

The court in [Brandon Heating & Plumbing \(1972\) Ltd. Et al v. Max Systems Inc.](#), 2006 MBQB 90 dismisses the plaintiff's claim pursuant to the [Queen's Bench Rule 34.14\(1\)\(b\)](#), applying the test set out in [Zelenski v. Jamz et al](#), 2004 MBQB 256. In this case, the plaintiff did not comply with undertakings given to preserve computer hardware and to provide the defendant with operating system disks and documentation. The court finds that:

The very things by reference to which central issues raised in defence could be expected to be determined have disappeared. They cannot be replaced, and there is nothing the plaintiff can now do to restore the situation....The destruction and loss of such crucial and relevant evidence...leads to the inevitable conclusion that the sole remedy available in light of these breaches is dismissal of the plaintiff's claim.

2. Punitive damages for contractual breach: Q.B.

In the recent decision in [Halligan v. Liberty Tax Service Inc.](#), 2006 MBQB 75, the court awarded punitive damages of \$200 000 against the franchisor to address the "hardball tactics employed by Liberty in attempting...to bludgeon Halligan into submission." The court states that "punitive damages must be sufficiently significant to bring home to a big franchise operation that egregious breaches of good faith to its franchisees must not be countenanced."

3. Enforcing Canadian Judgments

Don't forget that [The Enforcement of Canadian Judgments Act](#) took effect on March 22, 2006. The Act provides for recognition and enforcement of both monetary and non-monetary civil judgments from other Canadian jurisdictions and simplifies the process for registration of those judgments.

4. Summary judgment denied on claim for pure economic loss

In the recent decision in [Brett-Young Seeds Limited et al v. K.B.A. Consultants Inc. et al](#), 2006 MBQB 78, the Master considers the decision in [Winnipeg Condominium Corporation No. 36 v. Bird Construction Co.](#), [1995] 1 S.C.R. 85 and declines the defendants' request for summary judgment on the claim for pure economic loss on the basis that "[T]he issue of whether the alleged danger was substantial and foreseeable should be dealt with at trial...."

5. Contaminated Sites CLE: May 10

The Manitoba Bar Association's Environmental Law Section is presenting a CLE program *Continued Work with Contaminated Sites* at noon on May 10, 2006. Sheryl Rosenberg is presenting. For further information, contact the [Manitoba Bar Association](#).

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